

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

|                                       |   |                      |
|---------------------------------------|---|----------------------|
| ANDREW FOLEY, <i>et al.</i> ,         | : |                      |
| Plaintiffs,                           | : |                      |
| v.                                    | : | Case No. 3:15-cv-96  |
| UNIVERSITY OF DAYTON, <i>et al.</i> , | : | JUDGE WALTER H. RICE |
| Defendants.                           | : |                      |

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CERTIFICATION OF QUESTIONS OF STATE LAW  
TO SUPREME COURT OF OHIO

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Pursuant to Rule 9.01 of the Rules of Practice of the Supreme Court of Ohio,  
the Court certifies three questions of state law to the Supreme Court of Ohio.

**I. Factual Background, Procedural History, and Reasons for Certification**

The relevant factual background and procedural history of this case, along  
with the reasons for certification, are set forth in this Court's Decision and Entry  
Sustaining in Part Defendant Dylan Parfitt's and Defendant Michael R. Groff's  
Motions for Judgment on the Pleadings or, in the Alternative, to Certify Questions  
of Law to the Ohio Supreme Court. A copy of said Decision and Entry is attached  
to this Order.

**II. Questions Certified**

- A. What is the statute of limitations for claims of negligent misidentification?
- B. Is the doctrine of absolute privilege applicable to claims of negligent misidentification and, if so, does it extend to statements made to law enforcement officers implicating another person in criminal activity?
- C. Is the doctrine of qualified privilege applicable to claims of negligent misidentification?

**III. Designation of Moving Party**

The Court designates Defendants Dylan Parfitt and Michael R. Groff as the moving parties.

**IV. Attorneys' Contact Information**

***Plaintiffs Andrew Foley, Evan Foley, and Michael Fagans are represented by:***

Michael A. Hill (0088130)  
Dennis Landowne (0026036)  
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216-696-3232

***Defendant Dylan Parfitt is represented by:***

Jane Michele Lynch (0012180)  
Jared A. Wagner (0076674)  
Green & Green, Lawyers  
800 Performance Place  
109 North Main Street  
Dayton, OH 45402  
937-224-3333

***Defendant Michael R. Groff is represented by:***

Timothy Paul Heather (0002776)  
Benjamin, Yocum & Heather, LLC  
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Cincinnati, OH 45202  
513-721-5672

*The following additional defendants are not directly involved in the issues certified:*


***\*Defendants University of Dayton and Thomas Burkhardt are represented by:***

Caroline H. Gentry (0066138)  
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937-449-6748

***\*Defendants Bruce Burt, Harry Sweigart, Sgt. Thomas Ryan, Officer Kevin Bernhardt, Officer Robert Babal, Officer Eric Roth, Officer Jonathan McCoy, Sgt. Michael Sipes, Sgt. Bradley Swank, and Lt. Joseph Cairo are represented by:***

Todd M. Raskin (0003625)  
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Date: December 7, 2015

  
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WALTER H. RICE  
UNITED STATES DISTRICT JUDGE